IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3508 of 2006
To
FIRST APPEAL No. 3515 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER - Appellant(s)
Versus
PRABHATBHAI DEVJIBHAI BARIA & 1 - Defendant(s)

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Appearance :
MS HANSA PUNANI, AGP for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 28/09/2006

ORAL COMMON JUDGMENT :

Admit.

1. These appeals arise from the common judgment delivered by the 2nd Joint Civil Judge [S.D.] at Vadodara in Land Reference Case No. 4177 of 1999 and its allied matters dated 4th February, 2005 and hence they are heard together and now they are being disposed of by this common judgment. The State of Gujarat is the appellant . It has challenged the awards passed in Land Reference Cases No. 4177 of 1999 and its allied matters whereby the Reference Court has granted compensation at the rate of Rs.22/- per sq. mtr., for the agricultural lands which were acquired under the provisions of the Land Acquisition Act [hereinafter referred to as 'the Act'] for the purpose of constructing canal for Narmada Project. The lands are situated at village Karan in Karjan Taluka District Vadodara. Notification under section 4 was issued on 20th March, 1997 and the declaration under section 6 was made on 16th November, 1997. After completing the requisite formalities the Special Land Acquisition Officer i.e., the appellant made award on 23rd March, 1999. He granted Rs.6.07 paise per sq. mtr for irrigated land and Rs.4.05 paise per sq. mtr for non-irrigated land. Since the claimants were not satisfied with the amount of compensation awarded by the appellant, they made applications to the Collector under section 18 of the Act for making reference to the District Court. Accordingly, the aforesaid reference cases were made.

2. Before the Reference Court the parties produced oral as well as documentary evidence. The Ld. Judge placed heavy reliance on document at Exh. 18 which is a judgment delivered in Land Reference Case No. 3025 of 1997 to 3034 of 1997 by 10th Joint Civil Judge [S.D.] Vadodara in respect of the land situated at village Fatepura. Keeping the said award in view, the Reference Court held that in the said case Rs.18/- per sq. mtr were awarded and the present land being adjoining to it and the notification under section 4 was issued after two years, with 10% annual increase, the rate of compensation could be determined at Rs.22/- per sq. mtr. It is this finding of the Reference

Court that is under challenge in these appeals.

3. I have heard Ms. Hansa Punani, Ld. AGP for the appellant. She has taken me through the record and proceedings of the case which is made available to this Court. She has submitted that the rate determined by the Reference Court is exorbitant and it is required to be reduced. I have given careful consideration to the submission advanced by the Ld. AGP. The record shows that before the Reference Court, the claimant of Land Reference Case No. 4182 of 1999 – Ajitsinh Harisinh gave his evidence at Exh. 13. He has stated in his evidence that his lands are acquired for the Narmada Project and was giving evidence on behalf of all the applicants before the Reference Court. According to him, the lands in question are situated on the boundary of village Karan and these lands are fertile, flat and of the same type. He has stated that the lands in question are irrigated land, they are fertile since there are facilities for irrigation as well as well. They used to have crops like cotton, tuver, vegetables, sugarcane, wheat, rice, castor seeds, etc. The crops were taken on two to three occasions in a year. According to him, at the rate prevailing in the year 1996, they were receiving income of Rs.40,000/- per Vigha, out of which half of the amount was being spent on the expenditure of the agriculture and the balance was net profit. He has further stated that the village Karan had facility of tar road, electricity, water supply and it had a hospital, school, market producers cooperative society, telephone and transport services like bus and railway. The lands are situated about 5 to 6 Kms away from National Highway No. 8. He has further stated that village Fatepura is situated just adjoining to the village Karan. The lands of Fatepura were acquired for the same purpose, namely construction of canal for Narmada Project and the owners of the said lands preferred Land Reference Cases No. 3025 to 3034 of 1997. The Court determined the market value at Rs.18/- per sq. mtr and the award was made to pay compensation @ Rs.18/- per sq. mtr together with all the statutory benefits

under the Act. This has been stated on affidavit. He has been cross-examined extensively by the otherside i.e., the appellant. However, the witness has stuck to his version given in the evidence and has denied certain suggestions that have been made to him.

3.1. As against that, Mr. Kamleshkumar N Gandhi, who was working as Deputy Executive Engineer in the office of the Executive Engineer, Narmada Project and Mr. Chandrakant S Solanki, who was the Special Land Acquisition Officer attached to Narmada Project, filed their respective affidavits. Mr. Gandhi in his evidence has stated that all the applicants reap only once the crop like Tuver and Juvar in a year. He has denied the applicants' claim that the applicants were receiving income of Rs.20,000/- as net profit from these lands. His evidence has not thrown much light on the issue. Mr. Solanki, the Speical land Acquisition Officer, has stated in his evidence that ater keeping every aspect in view, the rate of compensation has been determined by him on the basis of the prevailing market value. He has been cross-examined by the otherside. According to him, the compensation determined by him was just and proper.

4. The Reference Court, after perusing this evidence and also the documentary evidence, placed extensive reliance on the award passed by the Court in the Reference Case in respect of the lands situated at village Fatepura. As per the material on record and the oral evidence, the villages Fatepura as well as Karan have almost a common boundary. Their lands are situated adjoining to each other. The lands of Fatepura have been acquired for the construction of canal for the Narmada Project. It appears that so far the quality of lands of both these villages is concerned, it is almost the same. The lands have been acquired for a common public purpose, namely, construction of canal for Narmada Project. The notification under section 4 in respect of land

situated at Fatepura was issued on 31./1/1995 and the award was made on 16/01/1997. In that case, the Special Land Acquisition Officer determined the market value at Rs.6.38 paise per sq. mtr. Since the owners i.e., the claimants were not satisfied with the makrte rate determined by the appellant, they made application under section 18 for reference. The Reference Court enhanced the market rate to Rs.18/- per sq. mtr for the acquired lands. The present acquisition proceedings have started with section 4 notification dated 20/3/1997 and the award has been made on 23/3/1999 by the Special Land Acquisition Officer i.e., the appellant. Thus, in the present case, the proceedings under the Act have been initiated after about two years and two months. It is the settled principle of law by now that while determining the market value annual increase of 10% is required to be given. In the present case, the gap is over two years and, therefore, the increase of 20% is required to be given. It may also be noted here that the lands of Fatepura and the lands in question are almost the same. In the award in respect of Fatepura lands, there is no division made with regard to irrigated land and non-irrigated land and common market value is fixed at Rs.18/- per sq. mtr. If that be so and if that award has become final, the Reference Court was within its bounds to determine a common market value for the lands in question i.e., irrigated as well as non-irrigated. Keeping in view the annual increase, the Reference Court has granted increase of 20% and has determined the market value at Rs.22/- per sq. mtr. I do not think any error has been committed by the Reference Court in arriving at the just and proper compensation to the claimants. The claimants have claimed Rs.30/- per sq. mtr. As against that, the Reference Court has awarded Rs.22/- per sq. mtr, which is just and proper. In view of the same, I do not find any merit in these appeals and they are dismissed with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.